

have been the subject of hot debate. The Copyright Act will be revised in 2013 when digital infringement will be further addressed.

Copyright is infringed by a person who, without permission, does any of the following:

- copies the work, or any part of it
- publishes the work
- issues copies of the work to the public
- performs, plays or shows the work in public
- makes the work available to the public by means of an electronic retrieval system such as a website or CD
- broadcasts the work
- makes an adaptation of the work, or does any of the above in relation to an adaptation.

Are there any circumstances where copies of a work are permitted?

'Fair Dealing' is also an area of negotiation under the Trans Pacific Partnership Agreement.

'Fair dealing' with a work for the purposes of research, book review or private study does not infringe copyright in the work. In determining what is fair, users must take into account:

- the purpose of the copying – it must be for research or for private study
- the nature and significance of what is copied in relation to the work as a whole
- whether the work can be obtained within a reasonable time at an ordinary commercial price
- the effect on the potential market for, or value of, the work
- the amount and substantiality or importance of the part copied, taken in relation to the whole work.

What happens if someone has infringed my copyright?

Copyright owners are entitled to take legal action against persons who infringe their copyright. Any use of copyright material not expressly permitted by the Copyright Act 1994 may infringe copyright.

There are specific procedures in place to deal with illegal file sharing via the internet. We are working with Copyright Licensing Ltd to ensure that authors have access to the documentation needed to take action against infringers, which could lead to fines of up to \$15,000 being imposed. If someone is offering your work via their website without your permission, the Copyright Act offers protection only if the site

is hosted in New Zealand.

If the work has been included in a published edition, you can reasonably ask for a fee for the use of your copyright material. If the breach is serious enough you could ask for the book to be removed from sale and reprinted without the use of your material.

If your work has been photocopied without your permission and exceeds the 'fair dealing' provision, you can contact Copyright Licensing New Zealand (CLNZ), PO Box 331488, Takapuna, North Shore City 0740 Phone (09) 486 6250 email info@copyright.co.nz web: www.copyright.co.nz.

Information on the Copyright Act 1994 can be found on the Ministry of Economic Development website www.med.govt.nz. The act itself can be found at www.legislation.govt.nz.

Licensing other rights

You can license other rights to your work such as subsidiary rights in a publishing contract. For more information on these rights you can purchase a copy of our model standard publishing contract, *The Business of Writing*.

The information provided here is of a general nature and may not be up to date. NZSA will not be liable for any reliance placed on this material and specific professional advice should be sought in any specific circumstance



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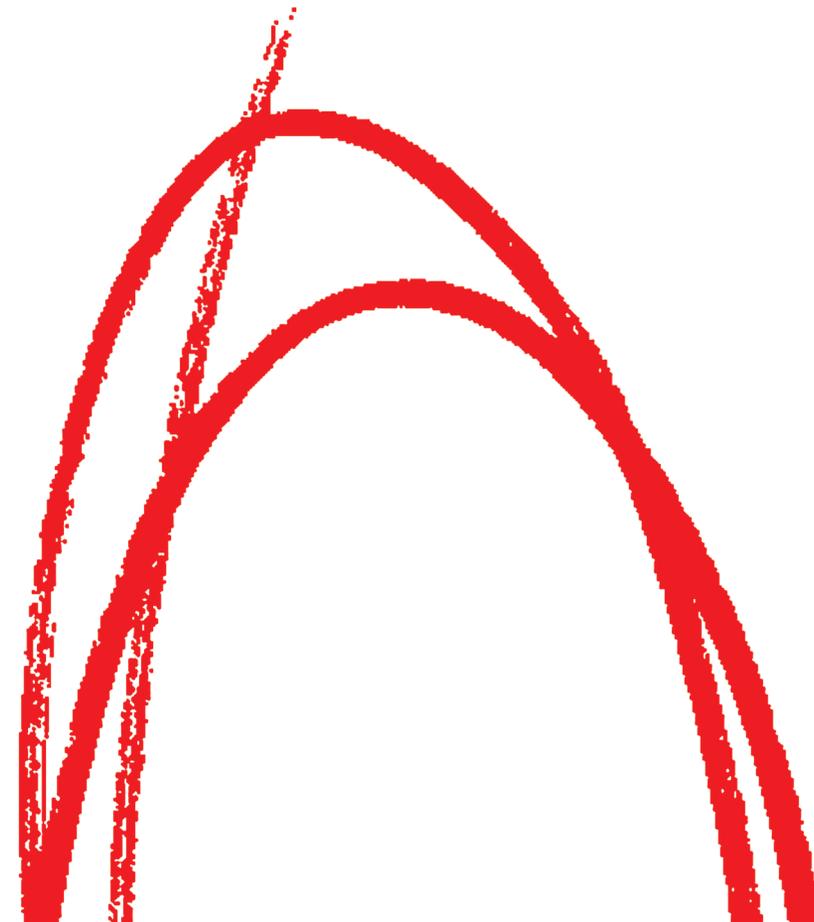


The NZSA (PEN NZ Inc) acknowledges the assistance of Creative NZ

Copyright

What it means
for you as a writer

NZ Society of Authors (PEN NZ Inc)
TE PUNI KAITUHI O AOTEAROA



In New Zealand, under the Copyright Act 1994, copyright comes into existence automatically when any original literary work is put into material form, for example a manuscript or a poem or short story. Registration of copyright is not required and no formal system for the registration of copyright exists in New Zealand.

What if I want to be sure?

Although not required by law, we recommend that authors include a copyright statement or notice on the work. You can do this by placing a line such as: © Jane Smith, 2011 in the footer of each page of your manuscript.

This will inform others that the work is subject to copyright protection and that consent is not granted for others to copy the work or deal with it in any other way restricted by copyright unless you give your permission.

If I have a brilliant idea for a book, can I copyright that?

No. There is no way you can copyright an idea. There is nothing to prevent someone else from having the same idea at the same time as you. Copyright takes effect only when you have articulated that idea in material form.

However, if you have an idea for a screenplay or film, the NZ Writers Guild has a process to assist writers to protect their ideas.

They can be contacted on 09 360 1408 or info@nzwg.org.nz

How long does copyright last for?

Currently in NZ the author's copyright lasts for 50 years from the end of the year of the author's death.

This may change under the Trans Pacific Partnership Agreement currently being negotiated.

Can copyright be assigned?

If the copyright owner (author) assigns copyright in writing, commonly in a publishing contract or agreement, to someone else, then the person to whom it is assigned becomes the copyright owner. Authors of books and periodical articles, for example, may pass copyright ownership to their publishers. This is sometimes done with children's picture books and readers as well as some commercial non-fiction where the author assigns copyright to a publisher for a fee in lieu of royalties. We recommend that writers be careful of selling their copyright without first obtaining advice from either the NZSA or their professional

writing organisation.

This does not apply to moral rights, which cannot be assigned.

Do publishers hold a copyright?

Publishers hold a copyright in the typography of a published edition and this lasts for 25 years from the end of the year in which the work was first published. Publishers may also hold the copyright for the text, if the author has assigned it to them in the contract.

Are there circumstances where I don't own the copyright?

If an author is employed and creates the work in the course of his or her employment, then the employer is usually the first owner of copyright. This is especially so in newspapers.

If the author or creator of some kinds of work (eg. sound recordings, films, photographs and computer programs) was commissioned to make that work, the first owner of copyright is usually the person who commissioned the work to be made. The commissioning rule does not apply to literary works. Parties can agree to vary the usual first ownership rule.

Can I use a quotation from another book in the one I am writing?

You cannot use someone else's copyright material in your book unless you first obtain permission from the copyright owner. You will need to check the front of the book to see if the copyright owner is the publisher or the author.

If an author has died, then the literary executor is likely to be the copyright owner. The only exception is if the work is out of copyright.

Can I use illustrations, photographs and diagrams from someone else's book?

Illustrations, photographs, diagrams and other artistic works cannot be taken from a published work and inserted into a work produced by another writer without permission from the copyright owner.

Whom do I ask for permission?

If the publisher is still in existence it would be best to contact them first. The address can usually be found in the front of the book. The publisher will be able to tell you how to contact the author or literary executor to ask for permission.

If the copyright owner is the publisher, you may also need to contact the author who will want to know what sort of work you wish to use their material in. This ensures that their moral rights are protected.

What do I need to tell them?

You will need to give them the full information regarding the material you wish to use. For example:

- the exact quote you wish to use
- the purpose of the work
- the title of the work
- the subject matter of the work
- the length of the work.

If you know it, also give them the publisher and the intended date of publication together with other relevant publication details such as print run and the countries where the work will appear.

Will the permission have conditions?

Permissions usually come with some conditions attached. These may be the attribution of the author, wording for the title page and a fee for the use of the material. While this may be small for some work, in the case of song lyrics in particular it could be quite expensive.

Can I alter or modify copyright material before using it?

No. Alteration or modification of a work by cutting and pasting extracts from it is likely to compromise the integrity of the work, thus infringing the author's moral rights.

However, you can use quotes from a work – for example, a line from a poem or a sentence or two from a prose work – but you would need to clear with the author the context of the quote ie. how it will be inserted into your work.

How is copyright administered?

Copyright is administered by the copyright owner or by the publisher on their behalf. Publishers are vigilant regarding infringements, as these could affect the sales of their publications.

How is copyright infringed?

The Copyright Act 1994 was recently amended to provide new enforcement measures against the unauthorized sharing of copyright material via the Internet. These amendments came into force on 1 September 2011 and